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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WAYNE A. PORRETTI,

Plaintiff

v.

DANIELS, et al.,

Defendants.

Case No.: 2:22-cv-00545-APG-DJA

**Order Denying Plaintiff's
Motion for Preliminary Injunction**

[ECF No. 12]

Pro se plaintiff Wayne Porretti moved for a preliminary injunction for treatment and nutritional care for his medical condition while an inmate at High Desert State Prison (HDSP). ECF No. 12. Since filing that motion, Porretti has been released on parole. ECF No. 18-1 at 2. The government argues that Porretti's motion should be denied because his release renders his motion moot. Porretti did not reply.

"An inmate's release from prison while his claims are pending generally will moot any claims for injunctive relief relating to the prison's policies unless the suit has been certified as a class action." *Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th Cir. 1995). There are two exceptions to this rule. First, a transferred prisoner's request for injunctive relief is not moot if the policy under which the alleged violation occurred is "system wide" and one of the defendants is in charge of the policy. *Walker v. Beard*, 789 F.3d 1125, 1132 (9th Cir. 2015). Second, a request for an injunction is not moot if the challenged action is "too short to be fully litigated prior to its cessation or expiration," and "there is a reasonable expectation that the same complaining party will be subjected to the same action again." *Wiggins v. Rushen*, 760 F.2d 1009, 1011 (9th Cir. 1985).

1 Porretti's motion for a preliminary injunction is moot because he is no longer in prison
2 and neither exception applies. Porretti was approved for parole and released in early October.
3 ECF Nos. 18-1 at 2; 18-3 at 2. Mail that has been sent to Porretti at HDSP has been returned as
4 undeliverable, which further confirms that Porretti is no longer an inmate there. ECF Nos. 19;
5 22. The first exception does not apply because Porretti was not transferred to another prison, and
6 he has not alleged that any of the defendants' actions were due to a "system wide" policy and
7 that one of the defendants had the power to change that policy. ECF No. 18-1 at 2
8 (demonstrating that Porretti was released on parole and not transferred to another prison). The
9 second exception also does not apply because the possibility that Porretti could return to prison is
10 too speculative. *See Wiggins*, 760 F.2d at 1011 (explaining that the possibility that a former
11 prisoner will be sent to prison again is "too speculative to rise to the level of reasonable
12 expectation . . ."). Accordingly, I deny Porretti's motion as moot because he was released on
13 parole and neither exception to mootness applies.

14 I THEREFORE ORDER that plaintiff Wayne Porretti's motion for preliminary injunction
15 **(ECF No. 12) is DENIED** as moot.

16 DATED this 2nd day of November, 2022.

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20 ANDREW P. GORDON
21 UNITED STATES DISTRICT JUDGE
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